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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,274	03/12/2004	Quin Winford	C04049US (98885.1C)	7234
22920	7590	04/27/2005	EXAMINER	
GARVEY SMITH NEHRBASS & DOODY, LLC THREE LAKEWAY CENTER 3838 NORTH CAUSEWAY BLVD., SUITE 3290 METAIRIE, LA 70002			STASHICK, ANTHONY D	
		ART UNIT	PAPER NUMBER	
		3728		

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/799,274	WINFORD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anthony Stashick	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 24 January 2005.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 2-5 and 9-20 is/are allowed.  
 6) Claim(s) 1 and 6-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by either one of Bazzle et al. 4,130,950 or Kim 4,771,556.

Bazzle et al. '950 discloses all the limitations of the claim including the following: a shoe having first and second lateral sides (sides of the upper and sole of the shoe pictured in Figure 1) and a bottom (bottom of the sole where spikes 11 protrude); at least one disc 23; the at least one disc being operatively connected to the first lateral side (by magnet 14) and above the bottom (see Figure 1) so that the disc will not engage a walking surface; the at least one disc being rotatable with respect to the shoe (the disc can be placed on the magnet and rotated); will provide the appearance of a rotating wheel when rotated (disc rotating looks like a wheel).

Kim '556 discloses all the limitations of the claim including the following: a shoe having first and second lateral sides (see Figures, lateral sides are sides of the shoe upper and sole) and a bottom (bottom of sole that contacts the ground); at least one disc (3); the at least one disc being operatively connected to the first lateral side (see Figures) and above the bottom (does not allow for contact of disc with the ground) so that the disc will not engage a walking surface; the at least one disc (3) being rotatable with respect to the shoe (disc can be rotated when placed within the shoe); will provide the appearance of a rotating wheel when rotated (rotating disc looks like rotating wheel).

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either one of the references as applied to claim 1 above in view of Spector 5,996,253 or Moumdjian 5,295,314. The references as applied to claim 1 above disclose all the limitations of the claim except for the bottom having a sole with an inflatable chamber and pumping port. Spector '253 and Moumdjian '314 are each examples of shoes that have a sole with a chamber and pumping port that allows for the chamber to be inflated to the desired pressure to perform the desired cushioning of the impact of the user's foot with the ground. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place a chamber with an attached pumping port, in the sole of either one of the references as applied to claim 1 above, to give the user the ability to adjust the cushionability of the shoe for personal comfort.

5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over either one of the references as applied to claim 1 above. The references as applied to claim 1 above disclose all the limitations of the claims except for multiple discs and the discs being of different designs. Showing that the disc of Bazzle et al. '950 is different than that of Kim '556, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make discs of different designs to allow for the user to choose what they wanted to display with each disc being interchangeable with the other.

***Allowable Subject Matter***

6. Claims 2-5 and 9-20 are allowed over the prior art of record.

***Response to Arguments***

7. Applicant's arguments filed January 24, 2005 have been fully considered but they are not persuasive. Applicant argues that the rotating of the discs of Bazzle et al. or Kim would not provide the appearance of a rotating wheel. This argument is not clearly understood. A rotating disc provides the appearance of a rotating wheel since the wheel looks like a rotating disc. It appears that applicant is attempting to say that the rotating of the discs would give the appearance of the shoe moving when it is actually standing still. This limitation is not present in the claims, however and therefore, the rejection is proper.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561. The examiner can normally be reached on Monday through Thursday from 8:30 am until 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS